



January 26, 2024

Ms. Kristen N. Edwards
South Dakota Public Utilities Commission
500 E. Capitol Avenue
Pierre, SD 57501

Dear Ms. Edwards:

The Legislative Research Council (LRC) received proposed rules from the Public Utilities Commission on December 15, 2023. In accordance with SDCL 1-26-6.5, the LRC reviewed the proposed rules for form, style, clarity, and legality, and now returns them with recommendations.

Please find enclosed:

- Proposed Rules Review Checklists;
- The proposed rules with recommended form, style, clarity, and minor legality edits;
- Directions for Submitting the Final Draft of the Rules; and
- The Interim Rules Review Committee Rules Presentation Format.

Under SDCL 1-26-4(4), the Commission is required to adopt LRC recommendations, subject to an appeal to the Interim Rules Review Committee for the Committee's final determination. Note, however, that LRC reserves the right to withdraw recommendations if they are resolved via discussion with Commission staff.

Please do not hesitate to contact me if you have any questions or to discuss and possibly resolve any of the recommendations.

Sincerely,

A handwritten signature in blue ink that reads "Justin J. Goetz". The signature is written in a cursive style.

Justin J. Goetz
Code Counsel
Enclosures

CC: Commissioner Kristie Fiegen, Chairperson, South Dakota Public Utilities Commission

**Legislative Research Council
Proposed Rules Research Review Checklist**

Date Proposed Rules Received by LRC:	December 15, 2023
Date Public Hearing Scheduled:	February 7, 2024
Proposed Rules Reviewed by:	Mary Merxbauer
Fiscal Note Reviewed by:	Bill Douglas

“No agency rule may be enforced by the courts of this state until it has been adopted in conformance with the procedures set forth in this chapter.” (SDCL 1-26-6.8)

Staff:

Please review the proposed rules and supporting documents and submit them with this completed checklist to the Code Counsel within ten business days from the date the proposed rules are received by the LRC.

KEY

ENTRY: MEANING:	"[Initials]" Reviewed by	"N/A" Not applicable	"[Initials]*" Edit Recommended or Issue
1. Verify the rules packet includes (SDCL 1-26-4(2)):			MM
a. The proposed rules:			MM
i. Any incorporated material:			MM
b. Notice of hearing (Form 6):			MM
2. Verify all documents have correct citations to the proposed rules provided in the packet.			MM
3. Verify the appropriate departmental secretary, bureau commissioner, public utilities commissioner, or constitutional officer approved the rules process to proceed. (SDCL 1-26-4(1))			MM
4. If the Department of Social Services is promulgating rules that are mandated by federal statute or regulation, use the DSS Federal Regulations Checklist.			
5. Review proposed rules for:			
a. Form, style, and clarity in accordance with the Administrative Rules Drafting Manual (including all existing language, not just amended language).			MM*
i. Verify the most recent rule is used. (Manual , pg. 5)			MM
ii. Verify all cross-references in text are current. (Manual , pg. 6)			MM*
iii. Verify all affected sections are included. For repealed sections, verify all affected sections are amended. (Manual , pg. 6)			MM
iv. Verify any renumbering of rules is consistent with Administrative Rules Drafting Manual. (Manual , pg. 7)			MM

- b. Legality, including:
- i. Verify the General Authority statute provides rule-making authority (i.e., “. . . shall/may promulgate rules to . . .”). ([Manual](#), pg. 8) MM*

 - ii. Verify the Law Implemented statute identifies the policy intended to be implemented. ([Manual](#), pg. 8) MM*

 - iii. If the proposed rule incorporates material by reference, verify the rule describes the exact section or portion of the material. ([SDCL 1-26-6.6](#); [Manual](#), pg. 11) MM

- For incorporated material that is not CFR, USC, Fed. Reg., Stat.:
- 1. Verify the proposed rule includes a reference note identifying the publication by title, date of publication, author, version/edition and where and at what cost the publication may be obtained. N/A

 - 2. Verify there is a statement attached to the material that includes the agency’s name, the section number of the rule that incorporates the material, and the date the proposed rule was served on the LRC. N/A

- iv. Verify the proposed rule does not incorporate or reiterate any statutory language other than definitions, and that the agency is not publishing or distributing statutory material. ([SDCL 1-26-6.1](#)) MM

 - v. Verify the proposed rule does not restrict any right or privilege to carry or possess a concealed pistol under SDCL chapter 23-7. ([SDCL 1-26-6.10](#)) MM

 - vi. Verify the agency does not delegate authority to a private association. (S.D. Const. art. III, §§ [23\(9\)](#), [26](#)) MM

 - vii. Verify the rule does not allow the agency to circumvent the SDCL ch. 1-26 rulemaking process (e.g., authorizing it to make its own rules). (See SDCL [1-26-4](#), [1-26-6.5](#), [1-26-6.6](#), [1-26-38\(2\)](#)) MM

 - viii. Verify the rule does not contain the agency's internal processes or policy (e.g., personnel policies) or other matter that is not defined as a rule per [SDCL 1-26-1\(8\)](#). MM

 - ix. Verify the rule does not incorporate a future rule or regulation, or incorporate future amendments to an existing rule or regulation, of another state or the federal government. ([State v. Johnson, 84 S.D. 556, 173 N.W.2d 894](#) (1970)) MM

 - x. Verify only the rules being changed are included in the packet and that chapter indexes are updated as needed. ([Manual](#), pg. 8) MM

6. Review Notice of Public Hearing ([SDCL 1-26-4.1](#)):
- a. Verify the LRC received the proposed rules at least 20 days prior to the scheduled public hearing. MM

b. Verify the notice contains a narrative description of the effect of the proposed rule.	MM
c. Verify the notice contains the reason for adopting the proposed rule.	MM
d. Verify the notice contains the location, date, and time (Central or Mountain) of the hearing.	MM
e. Verify the notice contains information about how amendments, data, opinions, and arguments may be presented.	MM
f. Verify the notice contains a deadline for submission of comments.	MM
i. If the authority promulgating the rule is a secretary, commissioner, or officer, ensure the deadline is ten days after the public hearing. (SDCL 1-26-4(6))	MM
ii. If the authority promulgating the rule is a part-time citizen board, Commission, committee, or task force, ensure the deadline is at least 72 hours before the public hearing (not including hearing day). (SDCL 1-26-4(6)).	N/A
g. Verify the notice contains information for how the public may obtain copies of the proposed rules.	MM
7. For any proposed rule regarding professional or regulatory examination or licensing that is to be published in pamphlet form, review the pamphlet for style, form, and clarity in accordance with the Administrative Rules Drafting Manual. (SDCL 1-26-11)	N/A

Reviewed by Code Counsel on January 25, 2024

**Legislative Research Council
Proposed Rules Fiscal Note Review Checklist**

Date Proposed Rules Received by LRC: _____

Date Public Hearing Scheduled: _____

Proposed Rules Reviewed by: _____

Fiscal Note Reviewed by: _____

“No agency rule may be enforced by the courts of this state until it has been adopted in conformance with the procedures set forth in this chapter.” (SDCL 1-26-6.8)

Staff:

Please review the proposed rules and supporting documents and submit them with this completed checklist to the Code Counsel within ten business days from the date the proposed rules are received by the LRC.

KEY

ENTRY:	"[Initials]"	"N/A"	"[Initials]*"
MEANING:	Reviewed by	Not applicable	Edit Recommended or Issue

1. Verify the rules packet includes ([SDCL 1-26-4\(2\)](#)):
 - a. Fiscal note (Form 5): _____
 - b. Small business impact statement (Form 14): _____
 - c. Housing Cost Impact Statement (Form 16), if applicable: _____

2. Review proposed rules for:
 - i. If the rule increases a fee, verify the agency provided information regarding financial resources available to the agency: beginning fund balance, receipts, disbursements, and ending fund balance for each of the last two fiscal years, as well as beginning fund balance, projected receipts, projected disbursements, and ending balance for current and next fiscal years. ([SDCL 1-26-4.8](#)) _____
 - ii. If the rule increases a fee by a licensing board or commission, verify the fee increase is “reasonable and necessary” in accordance with [SDCL 1-26-6.9](#). _____

3. Review the Fiscal Note ([SDCL 1-26-4.2](#)):
 - a. Verify the Fiscal Note states whether the proposed rule will have any effect on the revenues, expenditures, or fiscal liability of the state, agencies, and subdivisions: _____
 - i. If there is an effect, verify the Fiscal Note includes an explanation of how the effect was computed? _____
 - ii. If there is an effect on subdivisions, is that effect described? _____

4. Review Small Business Impact Statement ([SDCL 1-26-2.1](#)):

- a. Verify if the rule change has any small business impact based on readily available info: _____
 - i. If only INDIRECT, verify that a brief description of the impact is included. _____
 - ii. If DIRECT, review 4.b through 4.h:
- b. Verify the Impact Statement includes a narrative explanation in plain, easy-to-read language. _____
- c. Verify the narrative explanation discusses the effect of the proposed rule on small business, including the basis for the rule's enactment and why the rule is needed. _____
- d. Verify the narrative explanation includes an identification and estimated number of small businesses subject to the proposed rule. _____
- e. Verify the Impact Statement includes the projected reporting and record-keeping required for compliance with the proposed rule. _____
- f. Verify the Impact Statement includes the types of professional skills necessary for preparation of required reports or records. _____
- g. Verify the Impact Statement includes a statement of the probable effect on impacted small business. _____
- h. Verify the Impact Statement includes a description of any less intrusive or less costly alternative methods of achieving the proposed rule's purpose. _____

5. Review Housing Cost Impact Statement ([SDCL 1-26-2.3](#)), if applicable:

- a. Verify that the agency has indicated what building sectors will be impacted by the rule change. _____
- b. Verify a description of and explanation of necessity for each standard and requirement is included. _____
- c. Verify the statement includes the average estimated cost of each standard and requirement. _____
- d. Verify that contact and estimate information is included for three licensed contractors or building trades professionals. _____

Reviewed by Code Counsel on _____

GENERAL RULES OF PRACTICE

Commented [A1]: Style - Include the chapter number above this entry--as depicted in the example on pg. 30, ARSD DM.

Section

20:10:01:01	Sessions of commission.
20:10:01:01.01	Definitions.
20:10:01:01.02	Use of rules of civil procedure.
20:10:01:02	Appearances.
20:10:01:02.01	Communications with commissioners.
20:10:01:02.02	Filing documents with the commission.
20:10:01:02.03	Contents and filing of pleadings.
20:10:01:02.04	Withdrawal and dismissal of pleading prior to final order.
20:10:01:02.05	Filing of documents.
20:10:01:03	Repealed.
20:10:01:04	Repealed.
20:10:01:05	Repealed.
20:10:01:06	Repealed.
20:10:01:07	Repealed.
20:10:01:07.01	Contents of consumer complaint.
20:10:01:08	Repealed.
20:10:01:08.01	Commission action on consumer complaints.
20:10:01:08.02	Complaints not in conformity.
20:10:01:09	Service of a consumer complaint -- Service of other complaints.
20:10:01:09.01	Service of documents by the commission.
20:10:01:10	Actions which satisfy complaint.

20:10:01:11 Repealed.

20:10:01:11.01 Defenses to complaint.

20:10:01:12 ~~Applications for new rates.~~ Repealed.

20:10:01:13 Repealed.

20:10:01:14 Adjournment and extensions.

20:10:01:15 Opportunity for hearing.

20:10:01:15.01 Burden in contested case proceeding.

20:10:01:15.02 Intervention.

20:10:01:15.03 Contents of petition to intervene.

20:10:01:15.04 Answer to petition to intervene.

20:10:01:15.05 Commission action on petition to intervene.

20:10:01:15.06 Individual's right to appear.

20:10:01:16 Amendments.

20:10:01:16.01 Response to amended pleadings.

20:10:01:17 Subpoenas.

20:10:01:17.01 Commission action on subpoena request.

20:10:01:17.02 Service of subpoena.

20:10:01:18 Repealed.

20:10:01:19 Stipulation.

20:10:01:20 Repealed.

20:10:01:21 Repealed.

20:10:01:22 Repealed.

20:10:01:22.01 Discovery -- Order to compel.

Commented [A2]: Style - Do not strike the catchline for a repealed section. See examples in ARSD DM, pgs. 30 and 35. Add the comma prior to "Repealed".

20:10:01:22.02 Notice of hearing.

20:10:01:22.03 Manner of service.

20:10:01:22.04 Change in time and place of hearing.

20:10:01:22.05 Hearing -- Opening statement.

20:10:01:22.06 Written testimony.

20:10:01:22.07 Exhibits at hearing.

20:10:01:23 Documentary evidence.

20:10:01:24 Procedure for filing documentary evidence.

20:10:01:24.01 Technical matter must be in exhibits.

20:10:01:24.02 Receipt of evidence.

20:10:01:24.03 Documentary exhibits furnished after close of hearing.

20:10:01:25 Briefs.

20:10:01:26 Repealed.

20:10:01:27 Repealed.

20:10:01:27.01 Reopening of the record.

20:10:01:28 Compliance with orders.

20:10:01:29 Rehearing or reconsideration.

20:10:01:30 Repealed.

20:10:01:30.01 Application for rehearing or reconsideration.

20:10:01:30.02 Answer to application for rehearing or reconsideration.

20:10:01:31 Repealed.

20:10:01:32 Information provided by commission.

20:10:01:33 Repealed.

20:10:01:34 Petition for declaratory ruling.
 20:10:01:35 Commission action on petition.
 20:10:01:36 Superseded.
 20:10:01:37 Superseded.
 20:10:01:38 Repealed.
 20:10:01:39 Confidential information defined.
 20:10:01:40 Confidential treatment of information.
 20:10:01:41 Requests for confidential treatment of information by a submitting party.
 20:10:01:41.01 Requests for confidential treatment of information by a non-submitting party.
 20:10:01:42 Requirements for proving confidentiality.
 20:10:01:43 Requests for access to confidential information.
 20:10:01:44 Use of confidential information in commission orders.
 20:10:01:45 Order to show cause -- Service, notice, contents.

20:10:01:12. Applications for new rates. ~~Any application for a new rate, fare, or charge filed with the commission shall include statements of facts, expert opinions, and substantiating documents and exhibits supporting the change requested. The application shall also state the change proposed to be made in the rates then in force and the time when the new rates will go into effect. The commission may request additional information, statistics, and data that the commission deems necessary for its investigation. Repealed.~~

Source: SL 1975, ch 16, § 1; 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

Commented [A3]: Form - Each rule section should occupy its own page in the proposed rules packet. ARSD DM, pg. 5.

Commented [A4]: Style - Follow the precise convention in the ARSD DM, pg. 32--retain the original period at the end of the sentence and simply insert "Repealed" immediately prior to that period, deleting everything else prior.

sheet must show a positive net worth of at least \$100,000 and show current assets greater than

show a positive net worth of \$500,000. At a minimum, for a class B license the applicant's balance

in order to offer voluntary credit sale contracts, a class A license applicant's balance sheet must

applicant's balance sheet must show a positive net worth of \$100,000 at least \$250,000. However,

20:10:12:15. Financial criteria for licensing. At a minimum, for For a class A license, the

Law Implemented:SDCL 1-26-19.1, 49-3-14, 49-3-15.

General Authority:SDCL 49-1-11.

85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

Source: 2 SDR 56, effective February 2, 1976; transferred from § 20:10:14:37, 12 SDR

defenses, or delay the proceeding or any part of it.

pleading of the party, refuse to allow the party to support or oppose designated claims or

officer, member, or employee of a party, the commission may strike all or any part of any

subpoena is obeyed. If a person who fails to obey the subpoena is a party to the proceeding or an

subpoena served upon the person, the commission may stay further proceedings until the

the manner prescribed by law for subpoenas in civil actions. If a person fails to comply with a

20:10:01:17.02. Service of subpoena. A subpoena shall must be served and enforced in

Law Implemented:SDCL 49-10-12.

General Authority:SDCL 49-1-11.

Commented [A5]: Style - This should not be underlined, as it is content currently found in rule. This often happens because in using the "Printer Friendly" version of the ARSD as the framework, the hyperlinked SDCL citations appear underlined. That autoforformatting should be removed. Moreover, a space should exist between the ":", and "SDCL" - which appears to be a typo that currently exists in some of the rule sections in this chapter. Please make these changes throughout the rule packet.

Lastly, a repealed section has its General Authority and Law Implemented notes struck through. See ARSD DM, pg. 32.

Commented [A6]: Form - By adhering to the convention of each rule section on a separate page, the line between sections is not necessary.

Commented [A7]: Style - per ARSD DM, pgs. 14-15.

Commented [A8]: Clarity - Wouldn't a "delay [of] the proceeding" entail a delay on any part of the proceeding--a delay must be made to a discrete step of the proceeding, must it not? Can this phrase be struck as redundant?

Commented [A9]: Clarity - By being "at least \$250,000," it is necessarily implied that this is "at a minimum." Accordingly, the intro phrasing should be -- "For a class A license, the applicant's balance...."

Commented [A10]: Style - Spaces around new or struck content must also be underlined and struck-through. LRC's convention is that any new content, where possible, should have the space immediately preceding it underlined. The same is true for removed content, with the space preceding being struck. ARSD DM, pg. 6.

Commented [A11]: Clarity - Strike as unnecessary?

Commented [A12]: Clarity - As suggested in the strike in the next sentence, is it not redundant to specify "positive" assets minus liabilities?

Commented [A13]: Clarity - Presuming this should also read "at least"? Otherwise, a literal interpretation of this language would be that the applicant's balance sheet must equal exactly positive \$500,000 to be able to offer these contracts.

Commented [A14]: Style - Following LRC drafting conventions, the strike should be to the space before "positive" and not after.

current liabilities. In determining net worth and working capital for a class A or class B applicant, the commission may disallow the following assets if the assets are withdrawals of equity or are uncollectible:

- (1) Accounts and notes receivable from or advances to stockholders, owners, partners, employees, or affiliates;
- (2) Accounts receivable over ~~180~~ one hundred eighty days old;
- (3) Investments or equities in cooperatives; or
- (4) Goodwill.

Commented [A15]: Style - ARSD DM, pg. 19.

At a minimum, the balance sheet for a class A or class B applicant must show current assets greater than current liabilities. ~~In determining working capital, the commission may disallow the following assets if the assets are withdrawals of equity or are uncollectible:~~

Commented [A16]: Clarity - This phrasing is redundant. Please strike.

-
- ~~(1) Accounts and notes receivable from or advances to stockholders, owners, partners, employees, or affiliates;~~
 - ~~(2) Accounts receivable over 180 days old;~~
 - ~~(3) Investments or equities in cooperatives; or~~
 - ~~(4) Goodwill.~~

Commented [A17]: Clarity/Style - Two items:

- 1) We should not have two sets of subdivisions in one section. If someone were to cite subdivision 20:10:12:15(2), which content would they be referencing?
- 2) Why are there two sets of subdivisions that read the same? The only difference is the lead-in to either. Can those two lead-ins be combined into one to alleviate this issue? My understanding is that working capital = current liabilities/assets, while net worth = all liabilities/assets. That seems like an easy amalgam. See above and to the left.

Source: 24 SDR 190, effective July 15, 1998; 40 SDR 39, effective September 9, 2013.

General Authority: SDCL 49-45-6(5).

Law Implemented: SDCL 49-45-7.

Commented [A18]: Legality - This does not appear to be the appropriate subdivision for this rulemaking subject area. It appears to be subdivision (4). Statute does not require you to specify the subdivision, necessarily, in the General Authority note (it is a different story for Law Implemented, see SDCL 1-26-6.2). By eliminating the subdivision, you prevent this from happening again--where an addition or repeal of a subdivision in statutory authority for a rule requires changing the note in an administrative rule.

20:10:26:04. Individual metering -- When not required. Individual meters are not required and no variance need be requested under the following circumstances:

Commented [A19]: Clarity - Consider whether this phrase is necessary, or whether the lead-in, into each subdivision, can clearly convey the information intended.

(1) For residential multiple-occupancy buildings consisting of only two units, of which one unit is occupied by the owner of the building;

(2) For hospitals, nursing homes, transient hotels and motels, dormitories, campgrounds, and other residential facilities of a strictly transient nature;

(3) For existing multiple-occupancy buildings which currently receive either master metered gas service or electric service, or both;

Commented [A20]: Style - "that" - ARSD DM, pg. 26.

(4) For existing mobile home courts and trailer parks;

(5) For multiple-occupancy residential buildings where gas service is used only for either gas ranges or gas dryers, or both; ~~and or~~

Commented [A21]: Clarity - the preferred word here should be "or." "And" is usually used in a list to include all of the above where "or" can be one or any combination of the list.

(6) For multiple-occupancy buildings which have central heating or cooling systems, central ventilating systems, or central water heating systems. ~~However, the applicant shall notify the commission so it may determine whether the applicant's system falls within this exception or whether the applicant is required to file an application for a variance.~~

Commented [A22]: Style - that (same)

If a building does not fall within one of the exceptions listed in this section or does fall within one of the subdivisions of § 20:10:26:03, the applicant may file an application for a variance with the commission consistent with this chapter.

Source: 18 SDR 26, effective August 7, 1991.

General Authority: SDCL 49-1-11, 49-34A-4, 49-34A-27.

Law Implemented: SDCL 49-34A-4, 49-34A-27.

Collateral References: In the Matter of the Investigation of Master Metering, Docket F-3237, Decision and Order dated June 13, 1980 (Errata Notice dated December 22, 1980); In the Matter of the Investigation of Master Metering, Docket F-3237, Decision and Order dated July 24, 1981; In the Matter of the Petition For Declaratory Ruling by S&D Metering, Ltd., F-3621, Declaratory Ruling and F-3237, Modifying in Part, Decision and Order dated October 2, 1986.

20:10:26:06. Notice requirements if no hearing is requested. If the applicant has not requested a hearing, the commission ~~shall~~ **must** serve notice on the affected utility company and all parties within ~~15~~ **fifteen** days after receipt in the commission's offices of a variance application which is in compliance with the provisions of § 20:10:26:05. The parties served notice of the variance request ~~shall~~ have ~~15~~ **fifteen** days to respond to the notice. Failure of the parties ~~who are~~ served notice to request a hearing within ~~15~~ **fifteen** days after service of the notice is considered a

Commented [A23]: Clarity - This concept of a variance seems buried in this section. Also, it is not clear in reading 20:10:26:03 that there is any exception--such as this variance--to the requirement of metering, which is depicted as a requirement without caveat. That exception must be referenced in 20:10:26:03 at the very least. I would strongly recommend that this content re: variances be inserted in 20:10:26:03.

Indeed, it is confusing to have one section explain when a meter is required, and then to have another section specify when metering is not required. This sets up the possibility of "daylight" existing between the two. Is there any daylight?

Legality - Addressing this concern--despite it being in sections of rule not specifically listed in the Notice of Hearing--should not be a problem, as the concept of "simplify[ing] master metering requirements" was referenced in the Notice. See SDCL 1-26-4(7) ("A proposed rule may be modified or amended at this time to include or exclude matters that were described in the notice of hearing").

Commented [A24]: Legality - Which of the subdivisions in SDCL 49-1-11 serve as general authority (i.e., the authority to promulgate rule in the subject area of metering/master metering)?

Commented [A25]: Legality - There are multiple subdivisions here referencing the PUC's ability to promulgate rules regarding meters--General Authority. What I do not see are the intelligible standards, or the "policy, standard, or rule" that provides guardrails or provides some context for the rules the PUC drafts in the subject area of metering requirements--Law Implemented. See ARSD DM, pgs. 9-10. Perhaps it is there? If not, this citation should be removed from the Law Implemented note. SDCL 49-34A-27 appears to provide sufficient Law Implemented in this respect.

Commented [A26]: Style - an action required as a condition of something - ARSD DM, pg. 14.

Commented [A27]: Style - ARSD DM, pg. 19.

Commented [A28]: Style - "that" - ARSD DM, pg. 26.

Commented [A29]: Style - can strike as there is no duty--the fifteen days is a statement of condition in law.

Commented [A30]: Clarity - Consider whether this phrase is redundant, as the parties referenced are those previously described as being those parties to which notice of the variance request was provided. If so, it can be struck.

waiver of hearing. ~~The commission shall publish a notice in the legal newspaper for the nearest city or town in which the variance is requested.~~

If the hearing is waived, the commission ~~shall~~ **must** consider the application without a hearing and enter its decision.

Commented [A31]: Style - an action required as a condition of something - ARSD DM, pg. 14.

Source: 18 SDR 26, effective August 7, 1991.

General Authority: SDCL 49-1-11, 49-34A-4, 49-34A-27.

Law Implemented: SDCL 49-34A-4, 49-34A-27.

Commented [A32]: Legality - Same issue as with the section immediately above.

Collateral References: **In the Matter of the Investigation of Master Metering**, Docket F-3237, Decision and Order dated June 13, 1980 (Errata Notice dated December 22, 1980); **In the Matter of the Investigation of Master Metering**, Docket F-3237, Decision and Order dated July 24, 1981; **In the Matter of the Petition For Declaratory Ruling by S&D Metering, Ltd.**, F-3621, Declaratory Ruling and F-3237, Modifying in Part, Decision and Order dated October 2, 1986.

20:10:32:52. Annual certification requirements for designated eligible telecommunications carriers. Consistent with 47 C.F.R. §§ 54.313 and 54.314 (January 1, 2006),

an eligible telecommunications carrier shall request the commission to file an annual certification with the Universal Service Administrative Company and the Federal Communications Commission stating that all federal high-cost support provided to the carrier will be used only for

Commented [A33]: Clarity - Does this impart any additional substantive requirements? If not--if it is just to say that what follows adheres to federal law--then it should be struck as unnecessary.

Legality - If you want to retain this material, know that these rules have been amended since 2006 and may need to be considered with a new date.

the provision, maintenance, and upgrading of facilities and services for which the support is intended. An eligible telecommunications carrier shall file its request for annual certification with the commission ~~on or before August 1, 2006, and by June~~ July first of each year ~~thereafter~~. Failure of an eligible telecommunications carrier to file by the deadline may result in the commission's inability to provide certification to the Universal Service Administrative Company and the Federal Communications Commission by the following October first.

Source: 32 SDR 231, effective July 10, 2006.

General Authority: SDCL 49-31-76, 49-31-77, 49-31-81.

Law Implemented: SDCL 49-31-3, 49-31-78.

20:10:37:10. Pipeline operator's incident reporting requirements. As soon as reasonably possible, but no later than one hour, following confirmed discovery as found in the Code of Federal Regulations, Title 49, C.F.R. Part 191 ~~as of~~ (July 1, 2021 2023), of an incident, the pipeline operator shall notify the commission by phone of any incident on the pipeline system owned or operated by the pipeline operator. The notification shall include the identity of the pipeline operator, the time and location of the incident, whether there are ascertainable fatalities, personal injuries requiring inpatient hospitalization, or property damage, or both, and any other significant facts and public dangers relevant to the incident. This reporting requirement does not relieve the pipeline operator of the federal reporting requirements as found in the Code of Federal Regulations, Title 49, Part 191 as of July 1, 2021 2023. This reporting requirement requires personal notification to an inspector. Inspector contact information shall be provided by the commission.

Commented [A34]: Style - Just noting the need to strike the space ahead of each bit of content proposed for removal.

Commented [A35]: Clarity - Is it necessary to restate the recipients of the certification, when that was already provided above?

Commented [A36]: Style - Remove the underline, as it suggests that this is new content (one of those finicky hyperlink issues, I bet!). This issue appears in other sections below--please make those revisions there, also.

Commented [A37]: Clarity/Style - Does this seem like the right part of the sentence to insert a citation to the CFR on incident reporting re: gas pipelines? Or should it read: "following confirmed discovery of an incident, as provided in 49 C.F.R. Part 191 (July 1, 2023)," (note the use of the parenthetical instead of "as of July 1, 2023" per ARSD DM, pg. 20).

Commented [A38]: Style - ARSD DM, pg. 19.

Commented [A39]: Style - "must" - ARSD DM, pg. 14 (used with inanimate subjects).

Commented [A40]: Clarity - Because there is comma use within a list of items, there should be semicolons used to distinguish. Semicolons after "operator," "incident" and "both" should replace the commas.

Commented [A41]: Clarity - It is first described as a notification and then it is a report? Or are we talking about something else now? If the former, use uniform nomenclature. If the latter, provide more content to distinguish the notification from the report.

Commented [A42]: Style - See the above recommendations re: this citation.

Commented [A43]: Clarity - It is likely that "this reporting requirement" means the same reporting requirement laid out in this section, but the prior section makes reference to a second requirement. Given the prior sentence, it would eliminate any ambiguity to specify "The reporting requirement in this section requires..."

Commented [A44]: Clarity - What does "personal notification" mean? Any potential for ambiguity there? Particularly when it is very clear that the PUC must be notified via phone.

Commented [A45]: Style/Clarity - Do not use passive voice unless necessary. "The commission shall provide inspector contact information..." But then the question is to whom? Perhaps that also needs to be specified "...to pipeline operators."?

Source: 36 SDR 57, effective October 19, 2009; 47 SDR 125, effective May 30, 2021.

General Authority: SDCL 49-34B-4, 49-34B-19.

Law Implemented: SDCL 49-34B-3, 49-34B-4, 49-34B-5, 49-34B-7, 49-34B-19, 49-34B-27.

Commented [A46]: Legality - Same issue.

20:10:37:17. Change of ownership. Each pipeline operator, upon finalization of an agreement to purchase or sell a jurisdictional gas pipeline facility subject to the provisions of ~~the Code of Federal Regulations, Title 49, C.F.R.~~ Part 192 ~~as of (July 1, 2021 2023)~~, must, within ~~30~~ thirty business days, submit to the commission's pipeline safety program a written notification of this agreement. This rule does not apply to any transaction made pursuant to SDCL 49-34A-35.

Commented [A47]: Clarity - Manual 4.19 prefers the term buy over purchase to simplify language.

Commented [A48]: Style - "shall" per ARSD DM, pg. 14 (not an action required as a condition of something and not an inanimate subject).

Commented [A49]: Style - Eliminate the underscore.

Source: 36 SDR 57, effective October 19, 2009; 47 SDR 125, effective May 30, 2021.

General Authority: SDCL 49-34B-4, 49-34B-19.

Law Implemented: SDCL 49-34B-3, 49-34B-4, 49-34B-19, 49-34B-27.

Commented [A50]: Legality - Same issue.

20:10:37:18. Notice requirements for transmission line construction. Each transmission pipeline operator within the jurisdiction of the pipeline safety program shall, prior to the construction of a new transmission line, or a relocation or replacement of a transmission line as defined in ~~the Code of Federal Regulations, Title 49, C.F.R.~~ Part 192 ~~as of (July 1, 2021 2023)~~:

Commented [A51]: Style - Manual 4.19 prefers "before" over "prior to".

(1) Submit the information below to the commission's pipeline safety program no later than ~~60~~ sixty days prior to the commencement of construction, relocation, or replacement:

Commented [A52]: Style - "beginning" - ARSD DM, section 4.19, preferred over "commencement".

(A) Pipeline operator's name and mailing address;

Commented [A53]: Style - Subsection notation now uses the same convention as statute. Accordingly, these should be (a), (b), (c), etc. - ARSD DM, pg. 14.

(B) Estimated dates construction is scheduled to begin and end;

Commented [A54]: Style/Clarity -Is there any reason why some prepositions/articles are eliminated?

(C) Map showing the location and proposed route of pipeline;

(A) The pipeline operator's
(B) The estimated...
(C) A map

(D) Identified gas transmission Integrity Management Program high consequence area, if applicable;

Commented [A55]: Style - Do not capitalize "titles of smaller officers or programs within departments." - ARSD DM, pg. 16.

Clarity - Is there some kind of Collateral Reference that can be provided below this section that describes what this is? For an example, see ARSD DM, pg. 21.

(E) Proposed steel pipeline specifications, including size, weight, grade, wall thickness, and coating;

(F) Proposed plastic pipe specifications, including size and Standard Dimension Ratio;

Commented [A56]: Style - Do not capitalize something that is not a proper noun.

(G) Proposed design and maximum allowable operating pressure of pipeline;

(H) Pressure test procedures and method of pressure test prior to operations;

(I) Proposed type of cathodic protection;

(J) Minimum burial depths of pipeline at time of construction;

(K) Proposed location and type of pipeline safety equipment;

(L) Proposed type of highway and water crossing, such as whether it will be bored and cased, bored only, or trenched;

Commented [A57]: Clarity - "and"

Style - We generally do not like using "such" - ARSD DM, pg. 25.

(M) Written construction procedures;

(N) Name of construction company if known at the time of filing the Notice; and

Commented [A58]: Style - make lowercase - ARSD DM, pg. 16.

(O) Pipeline operator's contact name and phone number;

(2) In the event of an emergency, as defined in the pipeline operator's operations manual, give telephonic notice of emergency construction, relocation, or replacement to the commission's pipeline safety program;

(3) Significant construction modifications shall be submitted to the pipeline safety program; and

Commented [A59]: Clarity - This does not read properly with the lead-in. Try: "Submit significant construction modifications to..."

(4) Submit the information below to the commission's pipeline safety program no later than ~~60~~ sixty days prior to the commencement of operation:

Commented [A60]: Style - "beginning"

(A) Operation and maintenance manual;

Commented [A61]: Style - Here, too, (a), (b), etc.

- (B) Emergency procedures;
- (C) Anti-drug and alcohol plan;
- (D) Public Awareness plan;
- (E) Damage prevention program;
- (F) Abnormal operations; ~~and~~
- (G) Operator's qualification plan; and
- (H) Integrity Management Plan.

Commented [A62]: Style - Make lowercase.

Commented [A63]: Same.

Source: 36 SDR 57, effective October 19, 2009; 47 SDR 125, effective May 30, 2021.

General Authority: SDCL 49-34B-4, 49-34B-19.

Law Implemented: SDCL 49-34B-3, 49-34B-4, 49-34B-8, 49-34B-19, 49-34B-27.

Commented [A64]: Legality - Same issue.

20:10:37:19. Annual report. Each pipeline operator shall submit to the commission a copy of

either its United States Department of Transportation Form RSPA F 7100.1-L ~~either~~ or Form RSPA F 7100.2-1, or both. A copy of the report shall be submitted by March ~~15~~ fifteenth each year for the preceding calendar year.

Commented [A65]: Style - The in-context edits recommended by LRC reflect the stance against use of "and/or" and its suggested alternative, per GLD, pg. 23.

Commented [A66]: Style - Remove the underscore.

Commented [A67]: Style - ARSD DM, section 4.19 says to avoid the use of "and/or" and use instead the convention to the left.

Commented [A68]: Same.

Commented [A69]: Style - "must" - GLD, pgs. 18-19.

Commented [A70]: Style - GLD, pg. 15.

found in 49 C.F.R. §§ 191.11 and 191.17 ~~and~~ of July 1, 2022 2023.

Source: 36 SDR 57, effective October 19, 2009; 47 SDR 125, effective May 30, 2021.

General Authority: SDCL 49-34B-4, 49-34B-19.

Law Implemented: SDCL 49-34B-3, 49-34B-4, 49-34B-6, 49-34B-7, 49-34B-19, 49-34B-27.

Commented [A71]: Legality - Same issue.

FORM 15

Rules Presentation Format

Department/Board/Commission Name _____

Please complete these questions to show that the SDCL 1-26 rule-making process is complete.

Use this format to organize your presentation to the Committee.

- Approval to proceed? Yes _____ No _____ Date _____

- Date of public hearing _____

- Date proposed rules and supporting documents submitted to the LRC and the Bureau of Finance and Management _____
 - any publication incorporated by reference;
 - the fiscal note;
 - the impact statement on small business; and
 - the notice of hearing.

- Date and name of newspapers in which the notice of public hearing was published:
 - Date _____ Newspaper _____
 - Date _____ Newspaper _____
 - Date _____ Newspaper _____

- Summary of how, when, and number of interested persons, if any, were contacted.

- Page numbers in the minutes where the agency considered amendments, data, opinions, or arguments regarding the proposed rules, along with any changes and final action.

- For any rule implementing a bill from a preceding session, the number of the bill:

- Date final rules and supporting documents submitted to the LRC and the Committee

DIRECTIONS FOR SUBMITTING THE FINAL DRAFT

Rules Review Meeting Schedule for the 2024 Interim: The Interim Rules Review Committee has completed its schedule for the 2023 Interim. An organizational meeting will be held in March 2024 to set the schedule for the 2024 Interim. Meeting notices will be posted on the LRC website and at the Capitol.

A. Committee: The following materials must be served on the Committee at least five days before the committee meeting via first-class mail, e-mail, or both:

1. Form 12 – Affidavit and all its referenced documents (for final rules, please three-hole punch and number by page the final rules):
 - a. Form 10 – Minutes of Public Hearing;
 - b. A record of written comments;
 - c. Form 14 – Small Business Impact Statement;
 - d. Form 5 – Fiscal Note;
 - e. For any rules that increase a fee, per SDCL 1-26-4.8, the agency's financial resource information;
 - f. For any rules prescribing new standards or requirements for building or remodeling a residential structure based on a model code, the Form 16 – Housing Cost Impact Statement; and
 - g. The final rules as adopted;
2. Form 15 – Rules Presentation Format;
3. First draft of proposed rules containing LRC recommendations for style, form, clarity, and legality; and
4. Letter from the LRC to the agency.

B. Legislative Research Council: The following materials must be submitted to the LRC at least five days before the committee meeting:

1. Final draft of adopted rules, double-spaced and containing only amended, repealed, or adopted rules, and showing overstrikes and underscores;
2. Original Form 11; and
3. Copies of:
 - a. Form 10 – Minutes of Public Hearing;
 - b. Form 15 – Rules Presentation Format; and
 - c. Form 12 – Affidavit of Mailing to Rules Committee.

C. Office of the Secretary of State: Following Committee hearing, each agency must complete and sign all documents before filing:

1. Form 13 - Certificate of rule completion;
2. Final draft of the adopted rules; and
3. Form 11 (per Secretary's request).